

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RONNIE GARRETT,

Defendant-Appellee.

UNPUBLISHED
February 7, 2003

No. 228653
Wayne Circuit Court
LC No. 97-003229

ON REMAND

Before: Neff, P.J., and Wilder and Cooper, JJ.

PER CURIAM.

This case is before us following remand by the Supreme Court¹ for further explanation of our earlier decision,² with respect to our finding of ineffective assistance of counsel on the ground that defense counsel failed to request an all-Detroit jury pursuant to 3rd Circuit LCR 6.410.

Following defendant's jury convictions of first-degree felony murder, MCL 750.316(b), and first-degree home invasion, MCL 750.110a(2), the trial court granted defendant's motion for a new trial on the basis of six grounds of ineffective assistance of counsel. At issue on remand is only one ground, counsel's failure to invoke defendant's right to a jury drawn solely from residents of the city of Detroit. The Supreme Court has directed this Court to explain "why it constituted ineffective assistance of counsel to fail to demand an all-Detroit jury, since a defendant has no right to a jury of any particular racial composition." Further, upon a finding of ineffective assistance, we are to "explain how counsel's deficient performance so prejudiced the defendant as to deprive him of a fair trial."

¹ *People v Garrett*, Order of the Michigan Supreme Court, (Docket No. 121575, issued December 26, 2002).

² See consolidated case, *People v Garrett*, unpublished opinion per curiam of the Court of Appeals, issued January 11, 2002 (Docket No. 221184).

A criminal defendant is entitled to an impartial jury drawn from a fair cross-section of the community. US Const, Am VI; *Taylor v Louisiana*, 419 US 522, 526-531; 95 S Ct 692; 42 L Ed 2d 690 (1975); *People v Hubbard (After Remand)*, 217 Mich App 459, 472; 552 NW2d 493 (1996). The fair cross-section requirement does not entitle a defendant to a petit jury that mirrors the community and the various distinctive groups in the population. *Id.* However, even if defendant was not entitled to a jury of a particular racial composition, defendant had a clear legal right to a jury drawn only from the City of Detroit, pursuant to 3rd Circuit LCR 6.410(B):

(B) Selection of Jurors. For trials of defendants described in subrule (A), the court will draw potential jurors from all of Wayne County, unless the defendant elects in writing, on or before the final pretrial conference, to be tried by a jury composed of persons drawn only from the City of Detroit.³

Because the City of Detroit's racial composition is predominately black, it follows that a jury drawn solely from the City of Detroit is likely to consist of a higher ratio of black persons. The record evidence supported this conclusion. At the *Ginther*⁴ hearing, defendant's criminal defense expert estimated that in his experience, Detroit juries were seventy-five percent African-American, whereas Wayne County juries were twenty-five percent African-American.

Because defense counsel failed to assert defendant's legal right under 3rd Circuit LCR 6.410(B), defendant was denied a trial before a jury that, in fact, was likely to be predominately black. Counsel's deficient representation was prejudicial because defendant's case involved a critical issue of cross-racial identification, and the testimony at the *Ginther* hearing indicated that, in general, cross-racial identification may be more difficult. Defense counsel testified that in his experience "persons who are of the same racial group as the Defendant are in a better position to identify racial characteristics within their own race."

In light of this testimony, defense counsel's explanation that it was trial strategy to not "stack the jury with black people," is implausible. Clearly, the issue was not whether the "jury" would be able to identify defendant, but whether the jury would be convinced that the prosecution's main witness, who was white, correctly identified defendant, who was black, as the perpetrator, particularly since the witness told the police that he thought the man he saw at the victim's house was "Arabic."

³ This rule only applies to defendants who were (1) charged with committing a felony in the City of Detroit, and (2) arraigned on the warrant or complaint before October 1, 1997. 3rd Circuit LCR 6.410(A).

⁴ *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

Considering the lack of direct evidence linking defendant to the crimes in this case, we are convinced that there is a reasonable probability that the result of the proceedings would have been different had counsel asserted defendant's right to an all-Detroit jury. Even if this omission did not prejudice defendant to the extent that he was denied a fair trial, we are convinced that the cumulative effect of errors in this case, given five other instances of ineffective assistance,⁵ warrants reversal. *People v Pickens*, 446 Mich 298, 309, 314, 326; 521 NW2d 797 (1994); *People v Daoust*, 228 Mich App 1, 16; 557 NW2d 179 (1998).

/s/ Janet T. Neff

/s/ Jessica R. Cooper

⁵ Counsel's failure to (1) move to suppress in-court identification; (2) meet with defendant; (3) obtain transcripts of the first trial; and (4) move to redact a statement regarding defendant's methadone use; and (5) defense counsel's reference to a polygraph examination.